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HOUSE BILL 2981

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State of Washington                      60th Legislature                      2008 Regular Session

By Representatives Williams, Blake, and Simpson

Read first time 01/18/08.    Referred to Committee on Agriculture & Natural Resources.

1            AN ACT Relating to moving towards more uniform surface mine  
2 regulations; amending RCW 78.44.031; adding a new section to chapter  
3 36.01 RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.**    (1) The legislature finds that the list of  
6 exemptions in the current system of surface mining regulations creates  
7 a patchwork mosaic where essentially identical surface mining  
8 operations receive disparate regulatory treatment based solely on who  
9 owns the mine and for what reason it exists.    A more uniform system of  
10 surface mining regulations should be pursued that bases regulatory  
11 decisions on actual environmental harm and not on the status of the  
12 operation's ownership.

13            (2) The legislature further finds that one such exemption applies  
14 to certain surface mines operated by a select group of counties,  
15 regardless of the environmental or aesthetic impacts of the mining  
16 operation.    Repealing this one exemption moves the state towards a more  
17 uniform regulatory approach and offers the residents of the affected  
18 counties the same protections enjoyed by all other Washington  
19 residents.    In addition, failing to repeal this exemption will foster

1 a regulatory environment that provides local government with an unfair  
2 competitive advantage over private businesses that do not enjoy the  
3 same exemption.

4 (3) It is the intent of the legislature for the department of  
5 natural resources to fully enforce the provisions of chapter 78.44 RCW  
6 on all county-operated surface mining operations not included in any  
7 remaining exemptions.

8 **Sec. 2.** RCW 78.44.031 and 2000 c 11 s 22 are each amended to read  
9 as follows:

10 (~~Unless the context clearly indicates otherwise,~~) The definitions  
11 in this section apply throughout this chapter unless the context  
12 clearly requires otherwise.

13 (1) "Approved subsequent use" means the post surface-mining land  
14 use contained in an approved reclamation plan and approved by the local  
15 land use authority.

16 (2) "Completion of surface mining" means the cessation of mining  
17 and directly related activities in any segment of a surface mine that  
18 occurs when essentially all minerals that can be taken under the terms  
19 of the reclamation permit have been depleted except minerals required  
20 to accomplish reclamation according to the approved reclamation plan.

21 (3) "Department" means the department of natural resources.

22 (4) "Determination" means any action by the department including  
23 permit issuance, reporting, reclamation plan approval or modification,  
24 permit transfers, orders, fines, or refusal to issue permits.

25 (5) "Disturbed area" means any place where activities clearly in  
26 preparation for, or during, surface mining have physically disrupted,  
27 covered, compacted, moved, or otherwise altered the characteristics of  
28 soil, bedrock, vegetation, or topography that existed prior to such  
29 activity. Disturbed areas may include but are not limited to: Working  
30 faces, water bodies created by mine-related excavation, pit floors, the  
31 land beneath processing plant and stock pile sites, spoil pile sites,  
32 and equipment staging areas. Disturbed areas shall also include  
33 aboveground waste rock sites and tailing facilities, and other surface  
34 manifestations of underground mines.

35 Disturbed areas do not include:

36 (a) Surface mine access roads unless these have characteristics of

1 topography, drainage, slope stability, or ownership that, in the  
2 opinion of the department, make reclamation necessary;

3 (b) Lands that have been reclaimed to all standards outlined in  
4 this chapter, rules of the department, any applicable SEPA document,  
5 and the approved reclamation plan; and

6 (c) Subsurface aspects of underground mines, such as portals,  
7 tunnels, shafts, pillars, and stopes.

8 (6) "Miner" means any person or persons, any partnership, limited  
9 partnership, or corporation, or any association of persons, including  
10 every public or governmental agency engaged in surface mining.

11 (7) "Minerals" means clay, coal, gravel, industrial minerals,  
12 metallic substances, peat, sand, stone, topsoil, and any other similar  
13 solid material or substance to be excavated from natural deposits on or  
14 in the earth for commercial, industrial, or construction use.

15 (8) "Operations" means all mine-related activities, exclusive of  
16 reclamation, that include, but are not limited to activities that  
17 affect noise generation, air quality, surface and ground water quality,  
18 quantity, and flow, glare, pollution, traffic safety, ground  
19 vibrations, and/or significant or substantial impacts commonly  
20 regulated under provisions of land use or other permits of local  
21 government and local ordinances, or other state laws.

22 Operations specifically include:

23 (a) The mining or extraction of rock, stone, gravel, sand, earth,  
24 and other minerals;

25 (b) Blasting, equipment maintenance, sorting, crushing, and  
26 loading;

27 (c) On-site mineral processing including asphalt or concrete  
28 batching, concrete recycling, and other aggregate recycling;

29 (d) Transporting minerals to and from the mine, on site road  
30 maintenance, road maintenance for roads used extensively for surface  
31 mining activities, traffic safety, and traffic control.

32 (9) "Overburden" means the earth, rock, soil, and topsoil that lie  
33 above mineral deposits.

34 (10) "Permit holder" means any person or persons, any partnership,  
35 limited partnership, or corporation, or any association of persons,  
36 either natural or artificial, including every public or governmental  
37 agency engaged in surface mining and/or the operation of surface mines,

1 whether individually, jointly, or through subsidiaries, agents,  
2 employees, operators, or contractors who holds a state reclamation  
3 permit.

4 (11) "Reclamation" means rehabilitation for the appropriate future  
5 use of disturbed areas resulting from surface mining including areas  
6 under associated mineral processing equipment, areas under stockpiled  
7 materials, and aboveground waste rock and tailing facilities, and all  
8 other surface disturbances associated with underground mines. Although  
9 both the need for and the practicability of reclamation will control  
10 the type and degree of reclamation in any specific surface mine, the  
11 basic objective shall be to reestablish on a perpetual basis the  
12 vegetative cover, soil stability, and water conditions appropriate to  
13 the approved subsequent use of the surface mine and to prevent or  
14 mitigate future environmental degradation.

15 (12) "Reclamation setbacks" include those lands along the margins  
16 of surface mines wherein minerals and overburden shall be preserved in  
17 sufficient volumes to accomplish reclamation according to the approved  
18 plan and the minimum reclamation standards. Maintenance of reclamation  
19 setbacks may not preclude other mine-related activities within the  
20 reclamation setback.

21 (13) "Recycling" means the reuse of minerals or rock products.

22 (14) "Screening" consists of vegetation, berms or other topography,  
23 fencing, and/or other screens that may be required to mitigate impacts  
24 of surface mining on adjacent properties and/or the environment.

25 (15) "Segment" means any portion of the surface mine that, in the  
26 opinion of the department:

27 (a) Has characteristics of topography, drainage, slope stability,  
28 ownership, mining development, or mineral distribution, that make  
29 reclamation necessary;

30 (b) Is not in use as part of surface mining and/or related  
31 activities; and

32 (c) Is larger than seven acres and has more than five hundred  
33 linear feet of working face except as provided in a segmental  
34 reclamation agreement approved by the department.

35 (16) "SEPA" means the state environmental policy act, chapter  
36 43.21C RCW and rules adopted thereunder.

37 (17)(a) "Surface mine" means any area or areas in close proximity

1 to each other, as determined by the department, where extraction of  
2 minerals results in:

- 3 (i) More than three acres of disturbed area;
- 4 (ii) Surface mined slopes greater than thirty feet high and steeper  
5 than 1.0 foot horizontal to 1.0 foot vertical; or
- 6 (iii) More than one acre of disturbed area within an eight acre  
7 area, when the disturbed area results from mineral prospecting or  
8 exploration activities.

9 (b) Surface mines include areas where mineral extraction from the  
10 surface or subsurface occurs by the auger method or by reworking mine  
11 refuse or tailings, when the disturbed area exceeds the size or height  
12 thresholds listed in (a) of this subsection.

13 (c) Surface mining occurs when operations have created or are  
14 intended to create a surface mine as defined by this subsection.

15 (d) Surface mining shall exclude excavations or grading used:

- 16 (i) Primarily for on-site construction, on-site road maintenance,  
17 or on-site landfill construction;
- 18 (ii) For the purpose of public safety or restoring the land  
19 following a natural disaster;
- 20 (iii) For the purpose of removing stockpiles;
- 21 (iv) For forest or farm road construction or maintenance on site or  
22 on contiguous lands; and

23 ~~(v) ((Primarily for public works projects if the mines are owned or  
24 primarily operated by counties with 1993 populations of less than  
25 twenty thousand persons, and if each mine has less than seven acres of  
26 disturbed area; and~~

27 ~~(vi)))~~ For sand authorized by RCW 79A.05.630.

28 (18) "Topsoil" means the naturally occurring upper part of a soil  
29 profile, including the soil horizon that is rich in humus and capable  
30 of supporting vegetation together with other sediments within four  
31 vertical feet of the ground surface.

32 NEW SECTION. **Sec. 3.** A new section is added to chapter 36.01 RCW  
33 to read as follows:

34 A county may not directly or indirectly purchase gravel, sand, or  
35 rock from a resource excavation operation that is not included within  
36 the definition of surface mine as defined in RCW 78.44.031 if the

1 operation is excluded from the definition of surface mine solely based  
2 on one or more of the exemptions provided in RCW 78.44.031(17)(d).

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